U.S. Department of Justice
Office of Justice Programs
Corrections Program Office

OJP
Corrections Program Office

Violent Offender Incarceration and Truth-in-Sentencing Incentive Grants

Answers to Frequently Asked Questions

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Violent Offender Incarceration and Truth-in-Sentencing Incentive Grants

Answers to Frequently Asked Questions

The following are answers to frequently asked questions related to the Violent Offender Incarceration and Truth-in-Sentencing Incentive Grants. Most of the questions have been raised by officials in the State offices responsible for administration of this formula grant program as well as by other interested parties. This document provides an interpretation of the program provisions and requirements as defined in the Program Guidance and Application Kit and should be used as a companion document to the kit. The Office of Justice Programs will provide updates to this document, as appropriate, in order to assist the States with program implementation.

A. Program Purpose

A.1 QUESTION: What are the purposes of the Violent Offender Incarceration and Truth-in-Sentencing Incentive Grant Program?

ANSWER: The purposes of the Violent Offender Incarceration and Truth-in-Sentencing Incentive Grant Program are to provide funds to States to:

- Build or expand correctional facilities to increase the bed capacity for the confinement of persons convicted of a Part 1 violent crime or adjudicated delinquents for an act which, if committed by an adult, would be a Part 1 violent crime.
- Build or expand temporary or permanent correctional facilities, including facilities on military bases, prison barges, and boot camps, for the confinement of convicted nonviolent offenders and criminal aliens, for the purpose of freeing suitable existing prison space for the confinement of persons convicted of a Part 1 violent crime.
- Build or expand jails.

A.2 QUESTION: What does "build" mean?

ANSWER: **Build** means the erection, acquisition, renovation, repair, remodeling, or expansion of new or existing buildings or other physical facilities, and the acquisition or installation of fixed furnishings and equipment therefor. It includes facility planning, prearchitectural programming, architectural design, construction administration, construction management, or project management. (Also see section on privatization.) Land may not be purchased with grant funds.

A.3 QUESTION: What is meant by “expand”?

ANSWER: **Expand** means adding (building) new beds to, remodeling, or retrofitting existing facilities; or privatizing facilities for the purpose of increasing bed space for violent offenders or freeing existing prison space for the confinement of persons convicted of a Part 1 violent crime. The types of costs included under the definition of "build" apply to the expansion, remodeling, or retrofitting of facilities.

B. Eligibility

B.1 QUESTION: Who may apply for the formula grant funds?

ANSWER: Only States are eligible to apply. "State" is defined as the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands. States may also apply through regional compacts.

B.2 QUESTION: Can States receive funds for both Violent Offender Incarceration and for Truth-in-Sentencing?

ANSWER: Yes. States that meet the eligibility criteria for each program can apply for and receive funding under both.

B.3 QUESTION: How much money is available for this program?

ANSWER: The FY 1997 appropriation is $670 million, which includes set-asides for the State Criminal Alien Assistance Program (SCAAP) to reimburse State and local jurisdictions for incarcerating criminal aliens, reimbursements for holding Federal prisoners in State and local facilities, a discretionary grant program to build jails on tribal lands, and program administration. **Approximately $471 million is available for distribution under the formula grant program in FY 1997.** While Congress must appropriate funds for each fiscal year before grants can be made, authorized amounts through FY 2000 are:

Fiscal Year	Authorization	Appropriation	Formula Program
FY 1996	$ 997,500,000	$617,500,000	$391,671,450
FY 1997	1,330,000,000	670,000,000	471,456,375
FY 1998	2,527,000,000		
FY 1999	2,660,000,000		
FY 2000	2,753,100,000		

B.4 QUESTION: Will the funds be awarded to the Department of Corrections?

ANSWER: The Governors designate a State agency to administer the program, which may be the

Department of Corrections or another agency within State government. The State office may make subawards to other State agencies and local units of government.

B.5 QUESTION: Can a State participate in a regional compact for the purpose of building a regional facility and also apply for its own award to build or expand other facilities within the State?

ANSWER: No. States are statutorily prohibited from receiving a grant both individually and as part of a compact.

B.6 QUESTION: Must all of the funds awarded to a regional compact be used for regional facilities?

ANSWER: No. States could form a compact for purposes of building a regional facility. Any funds not used for this purpose could be passed through to the participating States, but all the funds for the participating States will be awarded to the compact. The funds must be spent for the purposes defined in the Act.

B.7 QUESTION: If a State participates in a regional compact 1 year, can it apply individually the following year?

ANSWER: Yes. However, the State may not receive **dual** funding as part of a compact and funding on its own. The amount of funds is finite and the State may only use the maximum of its allocation. The State may choose to split the maximum amount of its allocation providing some for a compact and some exclusively for its own use.

C. Violent Offender Incarceration—Eligibility Requirements

C.1 QUESTION: To qualify for Tier 1 funding, a State must provide an assurance in its application that it has implemented, or will implement, correctional policies and programs, including Truth-in-Sentencing laws related to the following criteria. What is meant by:

- **Ensure that violent offenders serve a substantial portion of the sentences imposed?**
- **Provide sufficiently severe punishment for violent offenders, including violent juvenile offenders?**
- **Ensure that the prison time served is appropriately related to the determination that the inmate is a violent offender?**
- **Ensure that the prison time served is deemed necessary to protect the public?**

ANSWER: These terms are not defined in the statute. Each State should define these terms relative to the circumstances within the State and show how the State will demonstrate a commitment to their implementation.

C.2 QUESTION: To qualify for Tier 1, a State must assure that "it has implemented, or will implement, correctional policies and programs, including Truth-in-Sentencing laws...." Does this assurance commit the State to passing and implementing laws that would meet the Truth-in-Sentencing Incentive Grants requirement that violent offenders serve at least 85 percent of the sentence imposed?

ANSWER: No. These policies, programs, and laws must address the three criteria described under the Tier 1 requirements. It is up to the State to define "substantial portion of sentences, sufficiently severe punishment, and appropriate prison time," which can be less stringent than the 85 percent requirement for Truth-in-Sentencing.

C.3 QUESTION: Who must sign the assurance needed to qualify for Tier 1?

ANSWER: The assurance should be signed by the person designated by the Governor who can certify that the State has implemented or will make a good faith effort to implement the Tier 1 criteria.

C.4 QUESTION: To qualify for funding under Tiers 2 and/or 3, must a State also qualify for funding under the lower tiers?

ANSWER: All States must qualify for Tier 1 in order to be eligible for funding under Tiers 2 and/or 3. However, a State could qualify for Tier 3 funding without qualifying for funding under Tier 2.

C.5 QUESTION: Is the "base allocation" of 0.75 percent of the total allocation for Tiers 1 and 2 (0.05 for the Virgin Islands and the Pacific Territories) the only amount that will be awarded to the States that meet the Tier 1 requirements?

ANSWER: Yes. Eighty-five percent of the total funds available for the Violent Offender Incarceration Program will be used for Tiers 1 and 2. Any funds remaining after the base allocations have been made to the States that qualify for Tier 1 will be available for distribution under Tier 2.

C.6 QUESTION: Are the States required to provide the percentage of persons arrested for a Part 1 violent crime who are sentenced to prison or will this be provided by the UCR?

ANSWER: The States are not required to do the computation. States are required to complete section 1 of the Data for Determining Eligibility form related to new court commitments of sentenced violent prisoners. OJP will use these data and data on

arrests for Part 1 violent crimes as reported to and provided by the UCR to compute the percentage of persons arrested for a Part 1 violent crime who are sentenced to prison.

C.7 QUESTION: Arrest figures as reported to and published in the UCR will be used to determine if a State meets the eligibility requirements for Tiers 2 and 3. Will a State be at a disadvantage if some of its jurisdictions do not report arrest data?

ANSWER: No. The data from each State are used to make comparisons within that State over time. The Bureau of Justice Statistics will compute statewide estimates based on the data that have been reported. Since the FBI does not publish UCR data for the Territories, a special effort is conducted to collect the needed data from them and from several States that have experienced reporting problems due to their conversion to the National Incident-Based Reporting System (NIBRS).

C.8 QUESTION: If a State believes that its arrest data are incomplete, can it provide more complete arrest data directly to OJP?

ANSWER: No. The data that are submitted in the UCR will serve as the official data, with the exceptions described above. Since no Tier 2 or 3 awards can be made until all eligible States have been identified, the acceptance and verification of new data would delay awards to all States. The FBI currently does statewide estimates for reported crime and verifies those estimates with the States. The Bureau of Justice Statistics will use a similar methodology to compute statewide estimates for Part 1 violent crime arrests. States are encouraged to work on improving the quality of UCR data reported to the FBI for future years.

D. Truth-in-Sentencing Incentive Grants—Eligibility Requirements

D.1 QUESTION: How is sentence length defined for purposes of Truth-in-Sentencing?

ANSWER: Sentence length is the term of incarceration set by the court at the time of sentencing or, for indeterminate sentencing States, set by a parole authority based on sentencing and release guidelines.

D.2 QUESTION: How is time served calculated?

ANSWER: Time served includes only the actual time an offender is committed to the care and custody of the correctional agency, and ***does not*** include any administrative or statutory time credits, such as reductions for good behavior, earned time, meritorious conduct, population control releases, etc. Jail time served can be included in the computation, as well as time served in community and reintegration placements, but ***not*** probation and parole time.

D.3 QUESTION: Is time served based on the maximum aggregate of all sentences for the inmate

or is it based on the sentence for the targeted offenses? For example, a rape and sodomy conviction would yield two prison terms that may run concurrently or consecutively. Would we aggregate the terms or only count the rape term when figuring the percentage of time served?

ANSWER: If both crimes are Part 1 violent crimes, the offender would have to serve 85 percent of the total of the two consecutive sentences or the longer of the two concurrent sentences. If only one of the crimes is a Part 1 violent crime, the time served is based on the sentence for the Part 1 violent crime only.

D.4 QUESTION: Does time an offender serves in an alternative residential placement count when computing the 85 percent?

ANSWER: Yes.

D.5 QUESTION: What is the sentence length for computing time served in a State that imposes a two-part sentence—a prison term to be served in prison and a "conditional release" term to be served under community supervision? Conditional release is a statutory release mechanism that is activated if the inmate is not paroled earlier by the parole board. For example, the judge imposes a sentence of 15 years, which is interpreted as being a prison term of 12 years and a conditional release term of 3 years based on a formula in the statute.

ANSWER: If the conditional release is based on a formula in the statute and is applied automatically to each sentence, then the computation of the percentage of sentence served should be based on the prison term (12 years in this example), excluding the term of conditional release.

D.6 QUESTION: How is a sentence with part of the time suspended by the judge at the time of sentencing handled (e.g., a 5-year prison sentence, with 2 years suspended)?

ANSWER: The sentence to be served, for purposes of calculating the 85 percent, would be 3 years. The suspended portion of the sentence would not be calculated towards the 85 percent.

D.7 QUESTION: If a State has Truth-in-Sentencing laws that require Part 1 violent crime offenders in all but one category of crime (e.g., aggravated assault) to serve not less than 85 percent of the sentence imposed, could the State still qualify for funds?

ANSWER: The State could qualify for funds if it can demonstrate that the average sentence served for all Part 1 violent crime offenders is *on average* not less than 85 percent of the sentence imposed. The State may also apply for an alternative definition of violent crime.

D.8 QUESTION: What will be accepted as an alternative definition of violent crime?

ANSWER: The statute requires that Part 1 violent crimes be used in the formula to allocate funds to the eligible States. The Office of Justice Programs (OJP) will use Part 1 violent crimes as reported to and published by the Federal Bureau of Investigation (FBI) for this purpose. No alternative definitions will be approved for use in the formula. Likewise, data on arrests for Part 1 violent crimes will be provided by the FBI.

In providing data to qualify for **Violent Offender Incarceration Grants**, those States that can should use the FBI's definitions of Part 1 violent crime. However, a provision for using an alternative definition, if approved by OJP, is provided for those States that have statutory crime classifications that do not conform exactly to the FBI's Part 1 violent crime definitions, making it difficult to identify the number of persons admitted to or released from prison for Part 1 violent crimes. The alternative definition must be as close to the Part 1 violent crime definitions as possible but may include or exclude a variation of an offense that is different from the FBI's definition. Total violent crimes, as described in the Data for Determining Eligibility forms, is a broader definition used by States to report data to the Bureau of Justice Statistics that has already been approved as an alternative definition.

Where a State does not require that all Part 1 violent offenders serve 85 percent, it may request approval of an alternative definition for use in the implementation of **Truth-in-Sentencing**. This definition should include most offenders sentenced for Part 1 violent crimes in addition to crimes considered by the State to be serious violent crimes.

D.9 QUESTION: What is the procedure for requesting approval to use an alternative definition?

ANSWER: A State that wishes to use an alternative definition for purposes of qualifying for Violent Offender Incarceration grants must explain why it is unable to provide the required data using the Part 1 violent crime definitions, list the crimes for which data will be provided, and explain the differences between these crimes and the Part 1 crimes as defined by the FBI. The request for an alternative definition for purposes of Truth-in-Sentencing should be accompanied by a list of the proposed crimes and their statutory definitions. The documentation should also include a comparison of the number of all Part 1 violent offenders sentenced to prison by crime type and the number sentenced under the State's Truth-in-Sentencing law. The alternative definition may be submitted with the State's application for funds or may be submitted to the Corrections Program Office for review and approval in advance.

D.10 QUESTION: Can a State change its definition of violent offender during the life of the grant program (through FY 2000)?

ANSWER: A State applying under the Violent Offender Incarceration Grant Program must use the same definition from 1 year to the next, unless there has been a statutory change that changes the State's definition. The State must notify OJP of statutory changes to the

definition. A Truth-in-Sentencing State may modify its definition of violent crime, subject to OJP approval.

D.11 QUESTION: Are States that receive approval to use an alternative definition of Part 1 violent crime required to use that same definition for both Violent Offender Incarceration and for Truth-in-Sentencing?

ANSWER: No (see D.8 and D.9).

D.12 QUESTION: Does the requirement that violent offenders serve "on average" at least 85 percent of the sentence imposed apply to individual offenses or an average of all violent offenses?

ANSWER: "On average" may apply to individuals within an offense type and/or to the various types of offenses.

For example, if some individuals sentenced to prison for robbery serve less than 85 percent of the sentence imposed and others serve more than 85 percent, the State must demonstrate that the average of the time served is not less than 85 percent. Likewise, if the average time served by offenders convicted of aggravated assault is less than 85 percent of the sentence imposed, but the actual time served for one or more of the other Part 1 violent crimes exceeds 85 percent, the State may still qualify for funds.

It should be noted that the average will be applied to time served by **individuals** sentenced to prison for Part 1 violent crimes. Therefore, if the average time served for an offense for which a large number of individuals are sentenced to prison is less than 85 percent, the overall average may drop below 85 percent even though the average time served is higher for one or more other crimes for which fewer offenders are sentenced to prison.

D.13 QUESTION: What happens if a State qualifies for Truth-in-Sentencing under the eligibility requirement that persons convicted of a Part 1 violent crime serve *"on average"* not less than 85 percent of the sentence imposed (i.e., the second criteria for determinate sentencing States or either criteria for indeterminate sentencing States), and then the average drops below 85 percent for 1 year?

ANSWER: If the average sentence served falls below 85 percent, the State will be ineligible for Truth-in-Sentencing funding for each year that it does not meet the eligibility criteria.

D.14 QUESTION: The statute defines an indeterminate sentencing State as a State that on April 26, 1996—the date of the enactment of the Department of Justice's FY 1996 appropriation—practiced indeterminate sentencing with regard to any Part 1 violent crime. Can an indeterminate sentencing State that could not meet the Truth-in-Sentencing eligibility criteria on that date establish or amend its laws,

policies, or sentencing and release guidelines to qualify for funds in subsequent years?

ANSWER: Yes.

D.15 QUESTION: Can a determinate sentencing State that changes its sentencing laws to indeterminate sentencing continue to qualify for funding?

ANSWER: No. The statute defines an indeterminate State as a State that, on April 26, 1996—the date of the enactment of the Department of Justice's FY 1996 appropriation—practiced indeterminate sentencing with regard to ***any*** Part 1 violent crime.

D.16 QUESTION: Can an indeterminate sentencing State that changes its sentencing laws to determinate sentencing continue to qualify for funding?

ANSWER: Yes, as long as it meets the eligibility criteria.

D.17 QUESTION: If the courts in an indeterminate sentencing State impose both a minimum and a maximum sentence, which sentence is used for computing the 85 percent?

ANSWER: If a court sentences within a range prescribed by law and the release decision is made by a parole authority **without the use of State sentencing and release guidelines** as described above, the State must use the maximum sentence imposed as the basis for computing the 85 percent actual time served.

However, the actual time served may be established by a court or by a parole authority if a State can demonstrate that:

- It has **enacted and implemented sentencing and release guidelines**.
- The guidelines are utilized by both the sentencing judge and the parole authorities.
- The guidelines serve as an aid in setting a prison term.
- The Part 1 violent offenders serve on average not less than 85 percent of the prison term.

D.18 QUESTION: If a State imposes mandatory minimum sentences for Part 1 violent crimes but does not utilize Sentencing and Release guidelines, can the mandatory minimum be used as the basis for measuring the actual time served?

ANSWER: No.

D.19 QUESTION: A State may qualify for Truth-in-Sentencing funds if it can demonstrate that "the State has enacted, but not yet implemented, Truth-in-Sentencing laws that

require the State, not later than 3 years after it submits its application for funds, to provide that persons convicted of a Part 1 violent crime serve not less than 85 percent of the sentence imposed." If a State recently passed such legislation, it may have difficulty showing a significant impact in the 3 years outlined in the Federal act.

ANSWER: The provision cited in the question requires that States begin to implement their Truth-in-Sentencing legislation within 3 years, not show an impact within that 3-year period.

D.20 QUESTION: If State law provides for life sentences that allow a person to be released after serving a specified period of time (e.g., 20 years), can the State still qualify for Truth-in-Sentencing funds, and if so, how is "life" handled for purposes of the 85 percent standard?

ANSWER: If the State statutorily defines a specific term of years for a life sentence, the State could still qualify for funds if it can demonstrate that offenders with such sentences serve not less than 85 percent of the number of years specified by law.

D. 21 QUESTION: What if a State allows a very small number of releases of offenders serving life sentences but does not statutorily define a specific term for a life sentence (e.g. sets a range of 20 years to life, allows for sentences to be commuted upon recommendation of a parole authority, the judge sets a minimum term to be served, or some other method of release). If the State meets the Truth-in-Sentencing requirements for other Part 1 violent offenders, can it qualify for grant funds?

ANSWER: States that have met the intent of Congress through the implementation of Truth-in-Sentencing may qualify for funding even though a very small number of offenders sentenced to life terms may be released. Experience shows that States that have implemented Truth-in-Sentencing do not release persons with life sentences without careful review of the circumstances of each case. Therefore, it would not appear to be in keeping with congressional intent to disallow States that have made strides in implementing Truth-in-Sentencing solely on the grounds that they cannot prove that offenders are serving 85 percent of an undefinable life sentence. States with an undefined life sentence should describe in their application how exceptions to life sentences are handled.

D.22 QUESTION: If a State's legislature is currently considering Truth-in-Sentencing legislation that meets the requirements of the program, will the State's allocation be held until the legislation is passed?

ANSWER: No. This program does not provide for allocations to all States. The total available funds are distributed to the States that can demonstrate in their application submitted by the due date that they meet the program requirements. No funds can be distributed until all eligible States have been determined. Therefore, it is not possible to hold funds to see if additional States come into compliance. If a State passes qualifying

legislation, it can apply for Truth-in-Sentencing funds in subsequent years, assuming funds are appropriated by Congress to continue the program.

E. Exception for Geriatric Prisoners and/or Prisoners With Medical Conditions

E.1 QUESTION: What is a geriatric prisoner?

ANSWER: There is no statutorily defined or generally accepted definition of a "geriatric prisoner" or "geriatric." Each State should define who is a geriatric prisoner and should establish criteria and guidelines for the release of such prisoners.

E.2 QUESTION: Is the same type of public hearing that is required for a prisoner with a medical condition also required prior to the release of a geriatric prisoner?

ANSWER: No.

E.3 QUESTION: Are there criteria or guidelines for the release of prisoners with medical conditions?

ANSWER: The State should establish criteria and guidelines for determining that a prisoner's medical condition is such that he or she no longer poses a threat to the public.

E.4 QUESTION: What type of public hearing must be held prior to releasing a prisoner for medical reasons and who must be invited?

ANSWER: Each State should establish procedures for these public hearings. At a minimum the victim and/or his or her family as well as affected members of the public should be notified of the hearing and provided an opportunity to be heard regarding the proposed release.

F. Allowable Uses of Funds

F.1 QUESTION: Funds can be used to build or expand temporary or permanent correctional facilities, including facilities on military bases, prison barges, and boot camps, for the confinement of convicted nonviolent offenders and criminal aliens to free existing prison space for the confinement of persons convicted of a Part 1 violent crime. Does build or expand include the purchase and/or repair of these facilities, and do correctional facilities include community-based facilities?

ANSWER: The grant funds may be used to purchase an existing building or structure, but may not

be used to purchase land, including the land that an existing structure sits on or land that will be used to build a new facility. Initial repairs to make the facility ready for use as a correctional facility are allowable expenses whereas on-going repairs and maintenance are not. Grant funds may also be used for community-based facilities as long as they serve as transitional placement for violent offenders or free conventional space for violent offenders.

F.2 QUESTION: Can grant funds be used to increase the security level of an existing facility, or for facility upgrades?

ANSWER: Yes. Grant funds may be used to increase the security level of a facility (e.g., from medium to maximum security) ***if*** the purpose is to make additional beds available for violent offenders. Costs associated with initial improvements or renovations to upgrade the facility for the placement of violent offenders are allowable expenses whereas ongoing improvements or renovations are not.

F.3 QUESTION: Can the funds be used to build and expand juvenile facilities?

ANSWER: Yes.

F.4 QUESTION: If funds are used to build or expand jails, do they need to be used to increase bed capacity for violent offenders?

ANSWER: No. These funds are available to ease the burden placed on local jails resulting from the State's efforts to incarcerate more violent offenders and/or implement Truth-in-Sentencing, which may result in nonviolent offenders, previously sentenced to prison, serving their sentence in a local jail.

G. Demonstrated Ability To Operate Facilities

G.1 QUESTION: Since State and local governments approve budgets for 1 year at time, how can a State demonstrate its ability to operate facilities built or expanded with grant funds?

ANSWER: The Governor is required to certify that it is the intention of the State to complete and operate facilities built with grant funds.

G.2 QUESTION: What happens if by the time a new facility is built and ready to open, which may be at least 3 to 5 years from now, the circumstances in the State have changed and the State cannot honor its commitment to operate the facility?

ANSWER: The Office of Justice Programs will review the circumstances and determine if the State acted in good faith when it accepted the Federal funds. Future awards could be

withheld and/or the State could be required to return funds if the Office of Justice Programs' determination on review is unfavorable.

H. Recognition of the Rights and Needs of Crime Victims

H.1 QUESTION: If a State currently recognizes the rights of crime victims but does not meet the Federal standards, is the State required to change its policies?

ANSWER: No. If a State has policies that are generally comparable to those at the Federal level, the State is not required to change its policies. If a State does not currently have policies that recognize the rights and needs of crime victims, or its existing policies afford crime victims only minimal rights, it must implement new policies by October 26, 1997. All States are strongly encouraged to adopt policies that are comparable to or exceed those applied in Federal proceedings.

I. Drug Testing, Interventions, and Sanctions Program

I.1 QUESTION: What must a State do to comply with the drug testing requirement?

ANSWER: States are required **to have implemented** a program of controlled substance testing, sanctioning, and intervention by September 1, 1998. The program must be clearly articulated in policies and procedures. A copy of these policies and procedures and a description of how they are being implemented must be submitted to the Office of Justice Programs, Corrections Program Office no later than March 1, 1998. States that have not developed their policies and procedures by that date must submit a plan of action to comply with the drug testing requirements by September 1, 1998, and must demonstrate compliance prior to receiving FY 1999 funds.

I.2 QUESTION: Who must be tested?

ANSWER: The target population to be tested includes appropriate adult offenders, male and female while they are incarcerated in State prisons and following release into the community while they continue to be under the custody or supervision of the State.

I.3 QUESTION: Does this mean that every offender in a State prison or on parole must be tested?

ANSWER: No. The scope of the drug testing program, the types of interventions, and the range of sanctions will be defined by each State based on the extent of drug use within its institutions and among parolees, current policies and practices, and available resources. At a minimum, the program must include targeted and random testing and testing of offenders while in treatment. The program must also include appropriate interventions and/or graduated sanctions that include denial or revocation of release in appropriate circumstances.

I.4 QUESTION: Does this provision require that all parolees or other offenders in a community-based program who test positive for drugs be sent back to prison?

ANSWER: No. There should be a response to each positive test. However, the State should develop a range of interventions and sanctions that can be used to provide an appropriate response to circumstances. The program may include such interventions as drug education, group counseling, cognitive restructuring, therapeutic commun-ity, coerced abstinence, etc., and such sanctions as a written warning, counseling, increased surveillance and testing, intensified reporting requirements, curfew, a day reporting center, house arrest, electronic monitoring, short-term detention, or return to secure confinement. Denial or revocation of release need not be the first course of action but must be an option to be applied in appropriate circumstances.

I.5 QUESTION: If a State currently has a comprehensive program of drug testing, is it required by this provision to do more?

ANSWER: Not necessarily. If a State has a comprehensive program of drug testing that includes prison inmates, community supervision, and parolees and there is an appropriate response (intervention and/or sanction) for each positive test, the State may meet the requirement by submitting clearly articulated policies and procedures that define the program.

I.6 QUESTION: What about a State that is currently doing little or no testing of the target populations? How much testing must it do?

ANSWER: All States are encouraged to implement comprehensive testing, intervention, and sanction programs for all offenders in the target population as well as for offenders at all stages of the criminal justice system. However, these programs can be expensive and take time to implement. States are required to make a good faith effort to comply with the spirit of the law and demonstrate that they are testing, treating, and sanctioning offenders, as appropriate to circumstances within the State.

I.7 QUESTION: Can the Violent Offender Incarceration and Truth-in-Sentencing grant funds be used to implement drug testing, provide treatment, and develop graduated sanctions?

ANSWER: No. However, Congress did specifically increase the funding by $25 million in FY 1997 for the Edward Byrne Memorial State and Local Law Enforcement Assistance (Byrne) Formula Grant Program, administered by the Bureau of Justice Assistance, "to allow States to implement drug testing initiatives." In addition, funding available under the Residential Substance Abuse Treatment (RSAT) for State Prisoners Formula Grant Program, administered by the Corrections Program Office, may be used to establish residential treatment programs that can provide intervention services for some offenders who test positive for substance use.

I.8 QUESTION: How would a State Department of Corrections access these funds?

ANSWER: Both the Byrne and the RSAT programs are administered by the same agency within the State. The agency has been designated by the Governor and is generally the criminal justice planning office, or it may be placed within the Attorney General's Office, the State Police, or similar department within State government. The State contact can be obtained by calling the Corrections Technical Assistance Line at (800) 848-6325.

J. Inmate Death Reporting

J.1 QUESTION: What must a State do to comply with the inmate death reporting requirement?

ANSWER: Beginning in 1997, all States must provide the requested information on inmate deaths in the annual Bureau of Justice Statistics Census of State and Federal Adult Correctional Facilities. The census collects aggregate data on prison inmate deaths from illnesses/natural causes (excluding AIDS), AIDS, suicides, accidental injury to self, death caused by another person, executions, and "unspecified causes."

J.2 QUESTION: What if a State does not collect the required information and is unable to complete the census?

ANSWER: The State is encouraged to provide the best possible data.

J.3 QUESTION: Will OJP require more detailed information including the name and circumstance of deaths in municipal or county jails, State or Federal prisons, or similar facilities?

ANSWER: Not at this time. However, Congress may direct the Department to implement additional requirements.

K. Sharing Funds With Units of Local Government

K.1 QUESTION: The Program Guidance and Application Kit states that each State should reserve up to 15 percent of its formula grant award in a fiscal year for counties and other units of local government. How is the amount to be passed through to local governments determined?

ANSWER: The State will determine how much to pass through to local governments. In making the decision, the State is required to consider the burden placed on a county or unit of local government that results from implementation of policies adopted by the State to implement the Violent Offender Incarceration and Truth-in-Sentencing Grant Program. For example, if local jails will be required to hold State prisoners because of prison overcrowding due to the increase in the number of violent offenders or longer sentences, or more nonviolent offenders will be sentenced to local jails to free prison beds for violent offenders, the State should share a portion of the grant funds with local governments.

K.2 QUESTION: If the use of the grant funds to construct beds for violent offenders at the State level will relieve the burden on local jurisdictions, can the State spend the entire grant award for construction at the State level?

ANSWER: Yes. The statute requires each State to reserve **up to 15 percent** for counties and other units of local government. The 15 percent is the maximum amount that can be awarded to local governments. There is no statutory minimum. The amount to be reserved for local governments is a State decision. States are encouraged to make this decision in consultation with or based on input from local jurisdictions. If the State determines that the implementation of the Violent Offender Incarceration and Truth-in-Sentencing Incentive Grant Program will not impact local governments or that the burden can be reduced more effectively by expanding capacity at the State level, the State may use the entire award for State-level projects.

K.3 QUESTION: Who makes the decision on how much to pass through to local governments, and

how do local jurisdictions influence it?

ANSWER: Each State will establish its own procedures to make funding decisions. Local units of government should contact the State administrative office to find out what procedures have been established and how to provide input into the process.

K.4 QUESTION: Must a local jurisdiction experience an impact from the State's efforts to incarcerate violent offenders and/or implement Truth-in-Sentencing in order to receive grant funds?

ANSWER: Yes. Impact may include the backup of State prisoners in local jails due to prison overcrowding, changes in law that require that certain offenders (usually with shorter sentences) be sentenced to jail rather than prison, or a requirement that local jurisdictions develop alternatives to incarceration. If there is no impact on local facilities, local jurisdictions are not eligible for funding. Impact means the burden placed on the county or unit of local government as a result of policies adopted by the State to implement this program.

K.5 QUESTION: What are the purposes for which funds awarded to local jurisdictions can be used?

ANSWER: Grant funds subawarded to counties and other units of local government may be used to construct, develop, expand, modify, or improve jails and other correctional facilities.

K.6 QUESTION: Can grant funds be used to build or expand locally operated community-based facilities, such as work release or community corrections?

ANSWER: Yes, as long as the funds used for local facilities are used to construct, develop, expand, modify, or improve facilities and do not exceed 15 percent of the total State award.

L. Juvenile Facilities

L.1 QUESTION: Are grants used for juvenile facilities restricted to the same purposes as those for adults?

ANSWER: No. In addition to building or expanding correctional facilities for the same purposes as adult facilities, the State may, under exigent circumstances, use grant funds to build or expand juvenile correctional facilities, including pretrial detention facilities and boot camps to increase capacity for the confinement of nonviolent juvenile offenders.

L.2 QUESTION: Can these facilities be State or local?

ANSWER: Yes. They could be either, as long as the funds used for local facilities do not exceed

15 percent of the total State award.

L.3 QUESTION: What are exigent circumstances?

ANSWER: Exigent circumstances may include an increase in juvenile violent crime prosecutions, overcrowding of juvenile correctional facilities, etc.

L.4 QUESTION: Is the State required to obtain approval from OJP prior to using grant funds for juvenile facilities for nonviolent juvenile offenders?

ANSWER: No. The State must provide a certification that exigent circumstances exist.

L.5 QUESTION: If funds are to be used to construct facilities for violent juvenile offenders, will the State be required to submit separate data on juvenile incarceration?

ANSWER: No. The statutorily defined criteria used to demonstrate eligibility for the Violent Offender Incarceration and Truth-in-Sentencing Incentive Grants apply only to offenders in the adult system, except that under Tier 1 of the Violent Offender Incarceration Program the State must assure that it has implemented, or will implement, correctional policies and programs, including Truth-in-Sentencing laws, that among other things "are designed to provide sufficiently severe punishment for violent offenders, including violent juvenile offenders." The application must include a description of how the State has demonstrated or plans to demonstrate a commitment to this and the other criteria outlined in the assurance.

States will be asked in future applications to provide information on the number and type of beds built with grant funds, including those in juvenile correctional facilities.

M. Private Facilities

M.1 QUESTION: Can grant funds be used to engage a private entity to build or expand a correctional facility on land owned by the State?

ANSWER: Yes, as long as ownership of the completed facility resides with the State.

M.2 QUESTION: Can grant funds be used to engage a private entity to build or expand a correctional facility that will be privately owned?

ANSWER: No. Ownership of facilities built or expanded with grant funds must reside with the State.

M.3 QUESTION: Can a unit of local government use grant funds it receives from the State under this program for privatization?

ANSWER: No. As currently written, the statute only permits States to use the grant funds for privatization.

M.4 QUESTION: What is meant by privatization?

ANSWER: Privatization means the private sector management and operation of a correctional facility that is owned by the State, the leasing of beds from a private entity, or the construction of a State correctional facility by a private entity for the purpose of increasing bed space for Part 1 violent offenders or freeing existing prison space for the confinement of persons convicted of a Part 1 violent crime. Ownership of facilities built or expanded with grant funds must reside with the State.

M.5 QUESTION: The Application Kit indicates that the State may use grant funds for the privatization of facilities to carry out the purposes of this program. Does the definition extend to allow the State to contract for beds provided in State prison facilities operated by the Department of Corrections in another State or for jail beds in local jurisdictions?

ANSWER: No. Privatization of facilities extends only to the private sector and does not extend to permit States to contract for beds in State prison facilities operated by Departments of Corrections in other States. Congress, in passing the current statute, prohibits expenditure of grant funds for the operation of a prison, unless such operations are through privatization. In light of the statute, accompanying legislative history, and the definition of privatization, grant funds may ***not*** be expended to contract for beds in State prison facilities in other States. Likewise, a State may not expend grant funds to contract for jail beds in local jurisdictions whether the beds are operated by the county or an established county corporate entity.

N. Implementation and Administration

N.1 QUESTION: How does a State know how much money it is applying for?

ANSWER: Other than the base allocations available to all qualifying States under Tiers 1 and 3, all of the allocations are dependent on the number of States that qualify for each type of funds. Therefore, it is not possible for OJP to provide estimated State allocations. In preparing its application, a State may want to discuss priorities for funding that will be implemented as Federal funds become available. Section 15 of the Application for Federal Assistance, which requests the estimated funding, may be left blank, or the applicant may provide an estimate that will be adjusted when the final allocations have been determined.

N.2 QUESTION: If the State receives funds in FY 1996, can it retain that amount until future Federal funding is awarded so that the total can be applied to a construction contract?

ANSWER: Yes. As indicated in the Program Guidance and Application Kit, when the Office of Justice Programs makes an award for a fiscal year, it will provide a grant period that includes the year of the appropriation plus 4 years. This long grant period is being provided because OJP realizes that construction projects may take several years to complete and that States may need funds from several fiscal years to have sufficient funds for costly projects. A State that qualifies for funds each year could have up to five awards open at one time. These funds are available to the State throughout the grant period to be drawn down as needed.

N.3 QUESTION: How long can a State hold awarded funds before making an expenditure?

ANSWER: The funds can be expended at any time during the grant period. When an award is made, the funds are available to the grantee jurisdiction on an as needed basis. States will draw down funds as expenses are incurred.

N.4 QUESTION: How is match computed?

ANSWER: The match must total 10 percent of the total project costs—***not*** 10 percent of the Federal funds. If the amount of Federal funds available for the project is known (e.g., $1 million), the minimum match amount is computed by dividing the Federal funds by 9 ($1 million/9 = $111,111).

Total Project Costs	$1,111,111
Federal Share (90 percent of total)	1,000,000
State/Local Share (10 percent of total)	111,111

N.5 QUESTION: Some States may not have their matching funds because the legislature is not in session, the State does know how much match is needed since the amount of Federal funds available to the State is not known, etc. Can a State submit its application if the matching funds have not been appropriated?

ANSWER: Yes, a State may submit its application. The matching funds are generally provided on a project by project basis and can be put in at any time during the grant period. The State administrative agency is responsible for ensuring that the matching funds are actually provided and should establish policies regarding the type of commitment that is required prior to making a subaward.

N.6 QUESTION: Can a State use revenues generated from the issuance of bonds to satisfy the cash match requirements?

ANSWER: Yes.

N.7 QUESTION: If the State legislature has appropriated money for the future construction of a correctional facility, can the State utilize the grant funds for currently planned construction and reserve the money the State appropriated for future construction to house violent offenders? Would this be supplanting since the State is projecting a need for additional bed space for violent offenders in the future and does not have money appropriated for this construction?

ANSWER: Using Federal grant funds in place of already appropriated State funds would be supplanting. If the State projects a need for an additional correctional facility in the future, but has not appropriated the funds for this facility, it could be built with grant funds. Since the Federal funds for each fiscal year will be awarded for a 5-year period, the funds may be allocated to projects that are in the planning stage.

N.8 QUESTION: If a State initiated the planning and construction process after the passage of the Violent Crime Control and Law Enforcement Assistance Act in anticipation of an appropriation, would the use of the grant funds to complete the project be supplanting?

ANSWER: States have been anticipating grant funds from this program since passage of the Crime Act in 1994 and should not be penalized for initiating the planning and construction process in order the make new prison beds available as soon as possible. If State funds have ***not*** been appropriated to complete the project, grant funds may be used for this purpose. However, grant funds may not be used to replace non-Federal resources that are or would have been available for this purpose.

N.9 QUESTION: Can a State use grant funds for projects that have been authorized but for which

no funds have been appropriated (e.g., the Department of Corrections has received minimal planning funds but no construction money for several institutions that would be used to house Part 1 violent offenders)?

ANSWER: Yes. Expenditure of grant funds for a project that has been authorized is allowed, provided that no State funds have been appropriated for this project. Grant funds may not be used to supplant (replace) non-Federal funds appropriated for the project.